

## THE ELEPHANT SHOOTING: COLONIAL LAW AND INDIRECT RULE IN KAOKO, NORTHWESTERN NAMIBIA, IN THE 1920s AND 1930s\*

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**ABSTRACT:** The law as a means of sociopolitical control in colonial states has gained significance as an issue in the recent historiography of Africa. This article discusses the making of a criminal case in colonial Kaoko, northwestern Namibia in the 1920s and 30s. It focuses on the problem of African voice and narrative and the ways in which they have been transformed into written evidence in the course of legal investigation. It demonstrates that the archival documents which emerged from this case require careful methodological scrutiny if they are to be used for the reconstruction of the region's past. It goes beyond colonial law as constituting a particular discourse to conceive colonial law as a space for intervention and agency for both colonized and colonizers. The central argument raised in the article is that while the South African administration in northwestern Namibia allegedly aimed at prosecuting culprits and securing evidence for their transgressions, men and women in Kaoko used colonial law as an arena for the negotiation of social and political issues. Concerned with the case's impact on the configuration of gender, the article shows how colonial law became both a site of male representation and power, and a space for female contestation of male claims to sociopolitical mastery.

**KEY WORDS:** Namibia, colonial law, indirect rule, gender.

### PRELUDE

IN December 1934 C. H. L. Hahn, the South African Native Commissioner of Ovamboland and Kaokoveld, wrote to the Secretary of then South-West Africa about an elephant shooting in late 1929 and the disappearance and killing of a witness in 1930 in Kaoko Otavi. In his report, the commissioner celebrated what he considered 'one of the biggest murder trials ever held under our administration'.<sup>1</sup> Just a few weeks earlier, the two main accused in the trial, Thomas Mutate, the most powerful headman in the region, and one Thomas Aishama, had been arrested and brought to the nearest magistrate court in Outjo for preliminary

\* I would like to thank Patrick Harries, Patricia Hayes, Dag Henrichsen, Giorgio Miescher and Frank Schubert for their critical comments on this essay. Funding for research in Kaoko and in the National Archives of Namibia in Windhoek was granted by the Swiss National Fund and by the University of Basel. An earlier version of this article was distributed as working paper of the Basler Afrika Bibliographien (No. 3/2006).

<sup>1</sup> National Archives of Namibia, Windhoek (hereafter, NAN) SWAA 2069 – A/454/171, Native Commissioner Ovamboland to the Secretary of SWA, extract from minute re Thomas Mutate case, 14 Dec. 1934.

examination.<sup>2</sup> When the elephant shooting was settled initially, Thomas Mutate was held responsible for the transgression and fined 35 head of cattle by the colonial administration.<sup>3</sup> Shortly after the trial ended, Native Commissioner Hahn re-opened investigations prompted by the disappearance of Petrus Kakuyu, a witness in the shooting case, and rumours of further illegal elephant hunting in and around Kaoko Otavi. A second trial sentenced Thomas Mutate to imprisonment with forced labour; Aishama was sent to prison for a much shorter period. Vita Tom, the region's only chief, was also drawn into the case and sentenced to several years of imprisonment.<sup>4</sup> The removal of two of the most important political leaders in Kaoko and their legal prosecution marked the apogee of a long-lasting and cumbersome process of investigation and trial. This process was reflected in an extensive body of formal documentation which became part of the holdings of what is today the National Archives of Namibia.

#### INTRODUCTION

Since the 1990s there has been a growing concern over the way colonial court records have been used in social histories of Africa.<sup>5</sup> These sources generate a paradox. On the one hand, the records capture a moment in which Africans were acting and speaking as litigants or witnesses; on the other hand, African voices and actions were 'profoundly shaped by the procedures of the court and by the circumstances surrounding the transformation of testimony into text'.<sup>6</sup> Historians have become increasingly

<sup>2</sup> Thomas Mutate is the name used by the South African administration. In the region Thomas Mutate was known as Katjitoha Thomas Humu. Humu is the surname used in northwestern Namibia, while Mutate is the corresponding surname in central Namibia. Thomas Aishama was a resident of Kaoko Otavi and loosely referred to as one of chief Vita Tom's sons. Vita Tom is locally referred to as Harunga. He is also known by his Afrikaans name Oorlog. The preliminary examination is found in NAN LOU 1/2/2 – No. 23 preparatory examination Thomas Mutate 1935 and No. 24 preparatory examination chief Oorlog 1935.

<sup>3</sup> NAN LOU 1/2/2 – No. 23 preparatory examination Thomas Mutate 1935, statement given by C. H. L. Hahn, magistrate Outjo, 1 Feb. 1935.

<sup>4</sup> NAN LOU 1/2/2 – No. 24 preparatory examination chief Oorlog, 15 May 1935. All men were eventually sentenced by the Circuit Court for the northern Districts, held at Otjiwarongo, in 1935. See NAN SCW 1/1/78, 23/1935 Circuit Court for the Northern Circuit District, Rex versus Thomas Mutate and Thomas Aishama charged with crime of murder and accessory after the fact, Otjiwarongo, 1 and 2 Feb. 1935, and 24/1935, Circuit Court for the Northern Circuit District, Rex versus Chief Oorlog charged with the crime of attempted subornation of perjury, Otjiwarongo, 2 May 1935.

<sup>5</sup> For a bibliographical discussion see C. Dickerman, 'Court records in Africana research', *History in Africa*, 17 (1990), 305–18. Pioneering examples have been Margaret Jean Hay and Marcia Wright (eds.), *African Women and the Law* (Boston, 1982); Richard Roberts and Kristin Mann (eds.), *Law in Colonial Africa* (Portsmouth, 1991); and Nigel Penn, *Rogues, Rebels and Runaways: Eighteenth-century Cape Characters* (Cape Town, 1999). Martin Chanock's *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Portsmouth, 1998) and his *The Making of South African Legal Culture 1902–1936. Fear, Favour and Prejudice* (Cambridge, 2001) have a stronger focus on legal history. Historical and anthropological scholarship on customary law has been much more extensive.

<sup>6</sup> Richard Roberts, 'Text and testimony in the Tribunal de Première Instance, Dakar, during the early twentieth century', *Journal of African History*, 31 (1990), 450.

sceptical of colonial courts and of documents produced in contexts controlled and determined by agents of the state.<sup>7</sup> Narratives constructed by colonial courts are considered particularly distorted and the value of court documents for the reconstruction of the past, let alone for the 'recovering' of subaltern voices and actions, is recognized as problematic, if not questionable.<sup>8</sup> Methodological and historiographical challenges emerging from the use of court records have recently been addressed by Richard Roberts in his discussion of colonial courts in the French Soudan in the late nineteenth and early twentieth centuries.<sup>9</sup> His concern has been to situate negotiations in a court case within broader contexts of African strategies of dispute and longer patterns of social interaction. Roberts argues that it is problematic to privilege a single case as only a small fraction of litigations made their way into the limited context of the court.<sup>10</sup> He argues for an analysis of how colonial institutions changed landscapes of power and how Africans negotiated these new terrains.<sup>11</sup> Colonial law and colonial courts were arenas for the reframing of social relations, and Roberts considers both those between the colonized and the colonizers and relations within African societies. What is of special interest in this article is that African women, in particular, faced attempts to reduce their capacities for economic activity and social agency and some managed to use the law as an alternative form of empowerment. The cases under discussion exemplify this point. Yet, while the related documents suggest an enclosed event and narrative framed by the chronologies of the investigation and prosecution, the negotiations which entered the legal sphere remained embedded in local systems of inequality determined by gender, race and power. Hence, individual cases need to be read and interpreted against the wider sociopolitical context. My discussion of African voices and agency in legal contexts echoes Roberts's work to some extent, but is sustained more decisively by earlier methodological perspectives developed by Natalie Zemon Davis and Carlo Ginzburg.<sup>12</sup> Their works on court cases in medieval and twentieth-century Europe foreground processes and conditions of transformation and translation. Their outcomes are seen to be the product of negotiations between the various agents involved – i.e. witnesses, perpetrators, judges and clerks – and of shifts between different systems of narrative order and cultural knowledge production.

The archival documents from which this article draws range from correspondence between the colonial officers involved, police reports and recorded

<sup>7</sup> Natalie Zemon Davis makes this point beyond the colonial context. See Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and their Tellers in 16th-Century France* (Stanford, 1987), 18.

<sup>8</sup> See, for example, Richard Rathbone, 'A murder in the colonial Gold Coast: law and politics in the 1940s', *Journal of African History*, 30 (1989), 445–61.

<sup>9</sup> Richard Roberts, *Litigants and Households: African Disputes and Colonial Courts in the French Soudan, 1895–1912* (Portsmouth, 2005). <sup>10</sup> *Ibid.* 8. <sup>11</sup> *Ibid.* 14.

<sup>12</sup> Zemon Davis, *Fiction*, and Carlo Ginzburg, *The Judge and the Historian: Marginal Notes on a Late-Twentieth-Century Miscarriage of Justice* (London, New York, 2002). In this article I use the German translation *Der Richter und der Historiker. Überlegungen zum Fall Sofri* (Berlin, 1991).

statements to a few letters written by some of the accused.<sup>13</sup> This variety of texts depends on the way administrative procedures were recorded. As the cases evolved over a period of several years, there were different stages of reporting, documenting and assessing; and there were different people involved, be it policemen in the area or the magistrate based outside the reserve. In fact, most of the inquiry took place outside the actual courtroom – i.e. the Circuit Court in Otjiwarongo – where it was eventually settled in 1935. Most witness statements were recorded during the preliminary investigation of the cases. It is the witness statement as a particular type of text that I am concerned with, particularly the nature of the statement and the way it raises questions about the place of African voices and narrativity in colonial archives. I do not consider these statements to constitute ‘oral information’ from the past as they only make African voices accessible to the contemporary historian in a severely mediated form.<sup>14</sup> The cases discussed here are representative examples of the transformation, distortion and constriction of oral testimony by men or women in the past. They were authored by translators, colonial officers and reporters and eventually materialized in written documents. The statements bear deep traces of the investigative realm. Court cases provide an incomplete and fractured view of the context in which things happened, and their representation of social relationships linking the accused to victims and witnesses remains rudimentary.<sup>15</sup> Nevertheless, this case study is an example of an African community using the colonial legal arena as a site for negotiation, a place for engaging in social friction and dispute.<sup>16</sup> But rather than recovering vestiges of individual African voice and practice, I suggest a reading and interpretation of these archival materials that sees agency as embedded in narrativity.<sup>17</sup> Following Zemon Davis and Ginzburg, my intention is to achieve a representation of historical possibilities and plausibilities of action and narration in a specific context. Given the characteristics of the recorded statements, I do not believe that these statements provide evidence for who has done and said what. Rather, I am concerned with the ways in which experiences of African men and women have been organized into accounts serving the colonial need for evidence and truth. Yet, as I suggest in this essay, there were limits to the colonial determination and fabrication of these narratives. The discourse of the cases of the elephant shooting and murdering of a witness remained shaped by the very specific context in which their terms and parameters were

<sup>13</sup> They were usually in Otjiherero and less frequently in Afrikaans. Some of the letters have been translated into English or Afrikaans by the colonial officers involved in the cases, while others have been summarized.

<sup>14</sup> My point here is to suggest a direction other than the one taken by Nigel Penn, for example. While remaining cautious, Penn insists: ‘Despite certain problems the court records of the VOC constitute an invaluable body of evidence. Nowhere else are the voices of the oppressed and vanquished – distorted though they might be – heard so clearly’. Penn, *Rogues*, 5–6. <sup>15</sup> Roberts, ‘Text and testimony’, 461.

<sup>16</sup> Rathbone, ‘Murder’, 457; Roberts and Mann (eds.), *Law in Colonial Africa*, 32; Roberts, *Litigants and Households*, 2.

<sup>17</sup> For a much more elaborated discussion of shifting concepts of agency in African historiography, see Premesh Lalu, ‘The grammar of domination and the subjection of agency: colonial texts and modes of evidence’, *History & Theory* (theme issue 39: ‘Not Telling: Secrecy, Lies, and History’), 39, 4 (2000), 48.

negotiated, i.e. within the legal bodies of the colonial state and by the intervention of the colonized African men and women.

This article is concerned with the emergence and making of a criminal case in Kaoko between 1929 and 1935 and its bearing on the development of colonial native administration in the territory.<sup>18</sup> The late 1920s and early 1930s saw the replacement of a few powerful political leaders, among them Vita Tom, by a council of headmen operating in partnership with the South African colonial officers in the northwest. This significant administrative shift has received little attention in the limited literature available on Kaoko's past. The prevailing interpretation has explained the introduction of the council of headmen as inevitable. It is seen as a consequence of the successful prosecution of criminal acts and individuals, and of the political vacuum caused when Tom fell ill and eventually died in 1937. I question this interpretation by showing that colonial law did not aim at the implementation of justice as a means of providing a remedy. I also show that the reframing of the region's political landscape was meticulously orchestrated by the various agents involved, most notably Native Commissioner Hahn.<sup>19</sup>

I first heard of the 'elephant case' in interviews I conducted with residents of Kaoko Otavi and nearby villages in 2001–2.<sup>20</sup> The elephant shooting and the alleged murder of Petrus Kakuyu were raised by some of the men I interviewed, as an instance of significant political conflict.<sup>21</sup> In both contemporary oral information and the archival sources there was a strong ambivalence about what had happened and who had been involved in the case.<sup>22</sup> In fact, the administration's search for evidence was

<sup>18</sup> I am not reconstructing events in order to answer the question of what happened in terms of a criminal investigation, i.e. to establish if there had been a murder and who the culprit was. I agree with Richard Rathbone's scepticism about the historian's competence to make post hoc judgements on guilt and innocence. See Rathbone, 'Murder'. This focus limits the historiographical scope of the article, which renounces a general introduction to Kaoko's history. On the whole, the historiography on the northwestern region is limited. For a discussion of the literature see Lorena Rizzo, 'A glance into the camera: gendered visions of historical photographs in Kaoko', *Gender & History*, 17 (2005), 683.

<sup>19</sup> My argument departs from the interpretation in N. J. van Warmelo, *Notes on the Kaokoveld (South West Africa) and its People* (Pretoria, 1951), and in E. L. P. Stals and Antje Otto-Reiner, *Oorlog en Vrede aan die Kunene* (Windhoek, 1999). A point similar to my argument is made by John Friedman, 'Making politics, making history: chiefship and the post-apartheid state in Namibia', *Journal of Southern African Studies*, 31 (2005), 28. For a more general discussion of legal processes as elements of colonial state formation see Linzi Manicom, 'Ruling relations: rethinking state and gender in South African history', *Journal of African History*, 33 (1992), 460.

<sup>20</sup> Interviews were conducted by Lorena Rizzo and Giorgio Miescher. My particular thanks go to Salatiel Muharukua who translated the interviews in Kaoko Otavi and surroundings, and to Sylvia Katjepunda who transcribed the interviews in Windhoek.

<sup>21</sup> Interview with Mbatambauka Rutjindo Tjavara, 10 Jan. 2002, Onjette / Kaoko Otavi, interview with Uetjipuraije Hiatjivi, 9 Jan. 2002, Onjette / Kaoko Otavi.

<sup>22</sup> The growth in documentation mirrored an increased administrative activity and state consolidation in the northern areas from the late 1920s onwards. See Jeremy Silvester, Marion Wallace and Patricia Hayes, '"Trees never meet": Mobility and containment: an overview 1915–46', in Patricia Hayes, Jeremy Silvester, Marion Wallace and Wolfram Hartmann (eds.), *Namibia under South African Rule. Mobility and Containment 1915–46* (Oxford, 1998), 22ff.; Tony Emmett, *Popular Resistance and the Roots of Nationalism in Namibia, 1915–1966* (Basel, 1999), 95ff.

unsuccessful; neither the remains of the elephant nor those of Petrus Kakuyu were ever found.<sup>23</sup> In what follows, I discuss the archival sources and the patterns which determined their production. I examine the representations produced in the records and reports and the narratives they constitute. I look at the processes that questioned or discredited some stories while inscribing others as evidence and truth.<sup>24</sup> One of the main challenges lies in reflecting on how information was constituted as evidence by the prosecution and eventually emerged as historical evidence in the archive.<sup>25</sup> The fractured and controversial stories contained in the archive only start to make sense if they are read in terms of what constituted acceptable knowledge.<sup>26</sup> One needs to ask: why did this case come to the attention of the administration while other serious matters failed to do so?<sup>27</sup> What were the disputes involved and to what extent were they 'solved'? But let me begin with the story of the elephant and the killing of a witness.

#### A NARRATIVE OF THE ELEPHANT SHOOTING AND MURDER CASES

From its very beginning, reconstruction of the events proved to be problematic. Rumours about the shooting of an elephant first reached the administration in mid-1929, when Upani Hiamauva reported the case to the police stationed at Tshimhaka on the northern Kunene border river.<sup>28</sup> Investigations began. Colonial officers recorded statements by witnesses saying that an elephant had approached the spring at Kaoko

<sup>23</sup> NAN LOU 1/2/1 – No. 23, statement by police officer G. A. Schoombee.

<sup>24</sup> Ann Laura Stoler, 'In cold blood: hierarchies of credibility and the politics of colonial narratives', *Representations* (special issue: 'Imperial Fantasies and Postcolonial Histories') 37 (1992), 151–89.

<sup>25</sup> See the discussion in Lalu, 'Grammar of domination', 52. There are various debates on the modes of knowledge production of colonial archives, among them most prominently the discussions inspired by the Subaltern Studies; see, for example, Gyan Prakash, 'Subaltern Studies and postcolonial criticism', *American Historical Review* (1995), 1475–90; Carolyn Hamilton, Verne Harris, Jane Taylor, Michele Pickover, Graeme Reid and Razia Saleh (eds.), *Refiguring the Archive* (Cape Town, 2002). I owe special thanks to my colleagues in the history department at the University of the Western Cape, particularly to Premesh Lalu, Ciraj Rassool and Leslie Witz, who have raised these issues on many occasions.

<sup>26</sup> The various and sometimes contradicting versions of what happened are not to be seen in terms of true and false, but rather as mirroring the context in which they emerged. For a broader discussion of this argument, see the introduction to Luise White, *Speaking with Vampires: Rumour and History in Colonial Africa* (Berkeley, 2000).

<sup>27</sup> Generally, the administration's consideration of violence in the reserves was biased, depending among other things on whether it was seen as a threat to the colonial state. For a general discussion, see David Killingray, 'The maintenance of law and order in British colonial Africa', *African Affairs*, 85 (1985), 411–37.

<sup>28</sup> Upani (Oupani) Hiamauva is the name used in the written archival documents. Interviewees too used this name while sometimes calling him Tjitjapia (interview with Mbatambauka Rutjindo Tjavara, 10 Jan. 2002, Onjette). Upani was an important character in local politics and went on to make his political career in the colonial administration in the late 1930s and early 1940s. NAN NAO 028 – 24/1/1, recorded statement of Upani, interrogated by C. H. L. Hahn, Kaoko Otavi, 3 Sept. 1930.



Otavi.<sup>29</sup> It was the dry season and residents had seen the animal roaming around the place. As they noticed a wound in one of the elephant's front legs, the community gathered in the vicinity of the spring.<sup>30</sup> Apparently the local headman, Thomas Mutate, advised some of the men, among them Upani, to get rid of it by chasing it into the bush.<sup>31</sup> At this stage, accounts of what happened diverge. Upani and those men involved in the chase claimed to have left the animal, still alive, somewhere in the bush, and that it had later been shot by the headman or at least on his order.<sup>32</sup> In contrast, Thomas Mutate and others accused Upani of having killed the elephant.<sup>33</sup> Matters became increasingly involved when Vita Tom entered the dispute as a supporter of Mutate and Aishama. At a certain stage of the investigation, several pairs of elephant tusks were produced but without any conclusive evidence linking them to the dead elephant. What seemed obvious was that shooting big game was far from exceptional and often occurred without the administration's knowledge. Whatever the reason, local residents had deliberately implicated the colonial state's representatives. To prevent further complications, Hahn decided to settle matters and levy a fine on Thomas Mutate.<sup>34</sup> Yet, the case took a new and more serious turn when Petrus Kakuyu disappeared.

It became evident that the disappearance of Kakuyu had been the result of Mutate's intent.<sup>35</sup> Some of the witnesses accused the headman of at least having ordered the killing. Mutate had faced difficulties in controlling information and in enforcing a coherent handling of the case by his subjects.<sup>36</sup> It would seem that Kakuyu had questioned the headman's authority and had threatened to provide the native commissioner with information on who had indeed shot the elephant.<sup>37</sup> In response to being challenged, Mutate involved Vita Tom and other political leaders.<sup>38</sup> These men were said to have removed Kakuyu from Kaoko Otavi for the period of Hahn's investigation. Matters deteriorated when Mutate and some of his followers, among them Aishama, led Kakuyu into the bush. The headman was said to have stabbed the

<sup>29</sup> See NAN NAO 028 – 24/1/1, recorded statement of Jakob Kakwatauhora, taken by Sgt. du Buisson, Kaoko Otavi, 22 May 1930; recorded statement of Lumingo Kamahoto, taken by C. H. L. Hahn, Kaoko Otavi, 3 Sept. 1930.

<sup>30</sup> Recorded statement of Lumingo Kamahoto, 3 Sept. 1930; recorded statement of Upani, 3 Sept. 1930.

<sup>31</sup> Recorded statement of Lumingo Kamahoto, 3 Sept. 1930; recorded statement of Upani, 3 Sept. 1930.

<sup>32</sup> Recorded statement of Upani, 3 Sept. 1930.

<sup>33</sup> NAN NAO 028 – 24/1/1, recorded statement of Tshinjinda, taken by C. H. L. Hahn, Kaoko Otavi, 3 Sept. 1930; NAN NAO 20 – 24/1/4, recorded statement of Thomas Mutate, taken by C. H. L. Hahn (probably at Ondangwa), n.d., NAN NAO 28 – 24/1/4 – statement of Karukururume, taken by C. H. L. Hahn, 3 Sept. 1930.

<sup>34</sup> NAN NAO 028 – 24/1/1, C. H. L. Hahn to the Secretary for SWA, re Thomas Mutate case against, 23 Nov. 1935.

<sup>35</sup> NAN NAO 028 – 24/1/1, C. H. L. Hahn to police station Tshimhaka, re Thomas Mutate case against, 7 Nov. 1934.

<sup>36</sup> NAN NAO 028 – 24/1/1, statement of Willem Hartley, recorded by Sgt. Cogill, Ondangwa, 21st November, 1934.

<sup>37</sup> NAN LOU 1/2/2 – No. 23, statement of Ventuura Nejanena, n.d., and statement of Japapo Jacob, n.d.

<sup>38</sup> NAN LOU 1/2/2 – No. 23, statement of Willem Hartley, n.d.

victim.<sup>39</sup> In this narrative, the motive for murder was rooted in the victim's refusal to be loyal and accept the way the headman had intended to solve the elephant problem.

Others accused the police officers in charge. Some of the witnesses, among them the victim's wife, thought that Sergeant du Buisson, who had been entrusted with the preliminary investigation of the elephant case, was responsible for Kakuyu's fate.<sup>40</sup> Apparently the policeman had harassed inhabitants of Kaoko Otavi, continuously threatening them with prosecution should they refuse to collaborate, and applying drastic measures to achieve his purpose.<sup>41</sup> Confronted with rumours of misbehaviour by his officers, Hahn decided to question the witnesses himself.<sup>42</sup> The investigation became increasingly confused as neither the native commissioner nor the witnesses accusing the headman managed to find Kakuyu's remains. The victim's body was said to have been mutilated and burnt.<sup>43</sup> Despite the total lack of evidence and some rather dubious modes of investigation, Thomas Mutate and Thomas Aishama were found guilty and imprisoned.<sup>44</sup> Vita Tom, who in the end was held responsible by the administration for all the trouble, could not be connected directly to the murder. He was found guilty of hindering the investigation and forcing witnesses to make false statements and sent to prison.<sup>45</sup>

#### EXPLORING LEGAL NARRATIVES AND NEGOTIATING GENDER

In colonial Kaoko, poaching of big game, manslaughter and murder were classified as severe offences and consequently fell under the administration's

<sup>39</sup> This version also dominates in oral accounts on the disappearance of Petrus Kakuyu.

<sup>40</sup> NAN NAO 28 – 24/1/1, statement of Josephine, recorded by C. H. L. Hahn at Kaoko Otavi, 3 Sept. 1930. Later, in front of the magistrate, Josephine Mavere would revise her statement and accuse Thomas Mutate. She would then be supported by a number of other women. Ironically, du Buisson himself confirmed that he had at least menaced Kakuyu, see NAN LOU 1/2/2 – No. 23, statement of P. G. du Buisson.

<sup>41</sup> NAN NAO 28 – 24/1/1, translation of a letter by Oorlog to C. H. L. Hahn, 14 June 1930; recorded statement of Thomas Mutate, recorded by C. H. L. Hahn, n.d.. Use of violence during the investigation by policemen and the native commissioner was confirmed in interviews with Uetjipuraije Hiatjivi, Onjette, 7 May 2002, and David Humu, Kaoko Otavi, 12 Jan. 2002.

<sup>42</sup> While the chronologies of the documents suggest Hahn's temporary movement to Kaoko Otavi, there is no particular document in the archive which dates his decision precisely. Interviewees liked to make jokes about Hahn building a temporary hut in a tree, where the native commissioner used to spend the night. Interview with David Humu, Kaoko Otavi, 12 Jan. 2002.

<sup>43</sup> The archival documents are rather short with regard to the alleged burning of the human remains (NAN LOU 1/2/1, M. van Niekerk, district surgeon, in front of the magistrate Outjo, no date). In contrast, some interviewees told extensive bloody stories about it; interviews with Uetjipuraije Hiatjivi, Onjette, 7 May 2002, and with Mbatambauka Rutjindo Tjavara, Onjette, 7 May 2002.

<sup>44</sup> NAN LOU 1/2/2 – No. 23, preparatory examination Thomas Mutate and Thomas Aishama (case against), 13 Mar. 1935.

<sup>45</sup> NAN LOU 1/2/2 – No. 24, preparatory examination on Chief Oorlog (case against), 15 May 1935.



direct jurisdiction.<sup>46</sup> They did not come under the customary law applied by local authorities.<sup>47</sup> In theory, this meant that the native commissioner, assisted by the police, would take up the investigation. If necessary, he would involve the magistrate and, in extreme cases, take the offenders to the circuit court. On the ground, these regulations and their implementation varied from case to case.<sup>48</sup> While fines in cattle and other penalties often proved effective, the application of further sanctions depended on how events developed. Murder was handled in colonial *and* customary law courts, provided the offenders and victims could be identified. In Kako in the 1920s and '30s, the number of police and colonial officers was too small to investigate activities in the reserve.<sup>49</sup> Officials were forced to rely on information actively delivered by residents, be they headmen, chiefs or their subjects. Recorded statements or written outcomes of an interrogation process emerged as a characteristic genre of colonial documents later preserved in the archives. These documents are incomplete. Most information on who participated in the process is absent from the documents accessible in the contemporary archival holdings.<sup>50</sup>

One of the statements given by Willem Hartley is an example of the specific narrative emerging in the context of this criminal investigation:

Copy.  
Case Disappearance Petrus Kakuyu  
Statement Willem Hartley  
Adult male – Coloured.  
Willem Hartley states:

<sup>46</sup> On the claim to jurisdiction by colonial authorities with regard to murder cases, see Marcia Wright, 'Justice, women and the social order in Abercorn, north-eastern Rhodesia, 1897–1903', in Hay and Wright, *Women and the Law*, 39.

<sup>47</sup> The hierarchies of legal institutions and competence were thoroughly assessed by C. H. L. Hahn, who considered himself to be the only one entitled to investigate the cases in Kako Otavi. See NAN NAO 28 – 24/1/1, Hahn to the Post Commander SWA Police, Ondangua, 11 July 1930. For a general discussion of legal institutions and procedures in colonial Namibia see Harald Sippel, 'Rechtsrezeption in Namibia. Prozesse direkter und indirekter Rezeption deutschen und südafrikanischen Rechts', *Recht in Afrika* (2003), 69–89.

<sup>48</sup> Meredith McKittrick states that in colonial northern Namibia, then Owamboland, most murder cases were dealt with under customary law. See Meredith McKittrick, 'Faithful daughter, murdering mother: transgression and social control in colonial Namibia', *Journal of African History*, 40 (1999), 266. On the tensions between ideology and practice in the application of colonial law, see Roberts and Mann (eds.), *Law in Colonial Africa*, 35. This assessment is based on my general knowledge of the archival material on colonial Kako. I have not done a quantitative analysis of all cases concerning Kako and their handling by customary and colonial courts.

<sup>49</sup> There were two policemen, du Buisson and Cogill, and up to three native constables. See NAN PJT 1 4/R, monthly reports police post Tshimhaka to the Native Commissioner of Ovamboland. Besides Tshimhaka, which had been opened in 1926 on the northern Kunene river, there was a temporary police post in southern Kako at Otjitundua, which was closed down in 1934. The lack of sufficient administrative personnel in Kako was one of the tropes in Hahn's reporting on the area. The native commissioner, who was based in Ondangua in then Owamboland, only rarely went on trips to the northwestern area.

<sup>50</sup> This has been confirmed with respect to archival documentation on a criminal case in Owambo in the late 1930s discussed in McKittrick, 'Faithful daughter', 276.

I reside at Oruwandjai in the Kaokoveldt. In 1930 the Native Commissioner of Ovamboland had a case against Thomas Mutate for Elephant shooting in which one Petrus Kakuyu figured.

This Petrus Kakuyu disappeared since under the following circumstances: On the very first visit to Ombombo in May [the 30th] we had been discussing the matter with Thomas Mutate on the road when he told me he would like to kill Petrus Kakuyu to do away with him as he is only going to give away other things, put him in trouble and also for the reason that he Petrus Kakuyu has stated that he Thomas Mutate shot the elephant on a certain day towards sunset.

I Willem Hartley said if you do that I shall report you, after this I went home to Oruwandjai.

The(n) came a period that Thomas Mutate and Oorlog made out that Petrus Kakuyu is mad and one day in my presence Oorlog and Thomas taught him to make a statement to Sgt. Cogill that he was dying owing to a hit he received from Sgt. du Buisson. This was done. The day before Mr. Hahn visited Kaokoveldt [Kaoko-Otavi] Petrus Kakuyu, I heard, had disappeared into the bush.<sup>51</sup>

This extract from Hartley's statement exemplifies the scale of formalism and fabrication. It was compiled through a process that involved several authors – the person questioned; the policeman; native commissioner or magistrate; and most importantly a translator.<sup>52</sup> First, the statement was translated from a local language, usually but not exclusively Otjiherero, into English or Afrikaans. The slippery nature of this translation is most visible in the shifting uses of first and third person attributable to the speaker, as well as in the imposition of European or Afrikaans names for people and places, and in the continuous classification of people as 'natives'.<sup>53</sup> In general, it had to be framed in terms of the requirements of a criminal investigation, structuring events in particular ways, establishing *the* truth and providing unambiguous evidence.<sup>54</sup> All statements followed a simple pattern.<sup>55</sup> Statements would start with the witness's name (often the first name only), followed by the gendered ethnic classification, the place of residence and the social relation linking the speaker to the accused or the victim.<sup>56</sup>

<sup>51</sup> NAN NAO 28 – 24/1/1, recorded statement of Willem Hartley, taken by C. H. L. Hahn, Kaoko Otavi, n.d. (1934). The spelling is as in the original.

<sup>52</sup> Zemon Davis, *Fiction*, 15ff. In contrast to Zemon Davis's claim that the petitioner in sixteenth-century France asking for the king's pardon was the main author, the colonial documents I am concerned with here do not allow for a hierarchy of influences on the text. In fact, I am more interested in the text and in issues raised than in the question of who exactly was speaking/writing. Translators were hardly ever mentioned. The main one we know was Willem Hartley who resided close to Kaoko Otavi at Oruwandjai and was involved in both cases as witness.

<sup>53</sup> For example, 'Oorlog' instead of 'Vita Tom' or 'Harunga', the name he was known by locally, or 'Thomas Mutate' instead of 'Katjitoha'.

<sup>54</sup> See, on this point, Ginzburg, *Judge and Historian*, 28ff., and Roberts and Mann (eds.), *Law in Colonial Africa*, 42.

<sup>55</sup> I do not know if there were any schedules or forms on which the questioning of witnesses was based, or if methods of criminal investigation had been part of the professional training of policemen stationed in Kaoko in this period. Due to the conformity of language of most statements in the cases dealt with, I suspect C. H. L. Hahn to have been the final editor. Both policemen, Sgt. Cogill and Sgt. du Buisson, were limited in their writing of English.

<sup>56</sup> Men were always labelled 'native' and women as 'native woman'. On the use of gendered categories in 'native policies', see Manicom, 'Ruling relations', 456.

A chronological account of events, places and persons involved, evidence from eye-witnesses or hearsay information usually followed.<sup>57</sup> Often the narrative flow was interrupted by references to matters that lay beyond the realm of the case. These extensions make the recorded statements appear as mixed genres, shifting between a crude listing of alleged facts, judicial assessments and sociopolitical and historical representations.<sup>58</sup> Finally, all the statements had a formalized closure, which underlined the witness' credibility – formulated as 'That's all I know' or 'I do not know more about it' – followed by the signature of the authors involved, and the place and date of the recording.<sup>59</sup> While all statements corresponded to the general formal structure, they varied substantially in length and content. These differences particularly depended on gender, as statements by women were usually very short and said little about the case or wider social and political issues.<sup>60</sup> Furthermore, the social status of the person questioned and his or her involvement with the colonial administration substantially determined the latitude given to witnesses to relate their accounts fully and in depth.<sup>61</sup> Consequently, the statements attributed to men such as Tom, Mutate and Hartley produced information on a wide range of issues and concerns, while the statements given by Kakuyu's wife and other women, remained, as we shall see, comparatively brief and insubstantial.

As the elephant and murder cases were dealt with by the legal bodies of the colonial state, social friction and conflict crystallized in a situation of intensified dispute under specific conditions. Neither of the parties involved engaged coherently with the cases. The frame of the legal investigation tended to isolate the events debated from longer patterns of interaction. Those involved knew each other; they were members of the same community and would continue to be so after the cases closed.<sup>62</sup> These social relations shaped their actions and arguments and gave meaning to them. But, rather than suggesting that the colonial narrative and the local one developed separately, that there was a colonial reading in contrast to an indigenous one, I argue that various interwoven narratives constituted ambiguous contexts of action and speech, in which agents developed the strategies most sensible to them.<sup>63</sup> As we shall see, the evidence produced in the elephant and murder cases signified shifts in the definition and constitution of gender, power and authority.

<sup>57</sup> I am referring here to the necessity of translating every-day experience into the categories of legal discourses. See, on this point, Elizabeth Mertz, 'Legal language. Pragmatics, poetics, and social power', *Annual Review of Anthropology*, 23 (1994), 435–55.

<sup>58</sup> The concept of the mixed genre is again based on Zemon Davis's discussion of letters of redemption.

<sup>59</sup> Unless the hand-written notes are kept in the archive, with the original signatures or marks, most transcriptions of the statements lack the original signature.

<sup>60</sup> See Zemon Davis, *Fiction*, 101; Mertz, 'Legal language', 443; and Roberts, *Litigants and Households*, 24.

<sup>61</sup> Zemon Davis hints at the compression of legal narratives, confining witnesses to what they had seen or heard about a crime only. Zemon Davis, *Fiction*, 5.

<sup>62</sup> See Roberts and Mann (eds.), *Law in Colonial Africa*, 45, and Roberts, *Litigants and Households*, 8.

<sup>63</sup> On colonial and local narratives mutually constituting each other see Henrietta L. Moore and Megan Vaughan, *Cutting Down Trees: Gender, Nutrition, and Agricultural Change in the Northern Province of Zambia, 1890–1990* (Portsmouth, 1994), xxi.

It also echoed concerns with resistance to male dominance in African social contexts.<sup>64</sup>

The three main protagonists involved in the cases were Mutate, Tom and Hahn. The formal settlement of the cases in the mid-1930s strengthened Hahn's position as key administrative figure, while Mutate and Tom were sent to prison. This dramatic outcome marked the end of decades of shifting relationships that had linked the men to each other as members of an emerging colonial elite in Kaoko. While the narratives of the legal cases were orchestrated around the question of the criminal acts and their perpetrators, what was negotiated between them were issues of political authority, control over people and resources and, I argue, over violence and knowledge.

In the beginning, the conflict evolved around the question of poaching, implicating Mutate, Upani and Hahn. Their rivalry concerned a variety of issues beyond the case. In his recorded statement, Upani accused Mutate of killing the elephant; his statement also raised some of the underlying friction between the two men:

Native Opani X Examined by Mr Hahn states:-

I reported the shooting of the elephant because I was afraid and partly because I am being treated unfairly by Headman Thomas: He wants me to pay a debt which was settled long ago. It was settled by the Magistrate. It was about sheep. I handed in the rifles (muzzle loaders) because I was afraid of becoming involved in the shooting of the elephant. I know that Thomas would do me harm. He would kill me if it were not for Chief Oorlog's protection. I left Kaoko-Otavi to live at Omuhiba because of Thomas ...

My son Tshikundu told me later that the elephant was dead. He also told me that he had seen the tusks at Kambonde's house. Kambonde is Thomas' brother and lives next door to him.

I handed over the rifles to the Sergeant at Tshimhaka because I was afraid that I would be drawn into this case. The guns came into my possession through Thomas ...

I know that Thomas has a Government rifle but there are one or two others. I have seen a short rifle (carbine) with Thomas's herd(er) Kamunika. The latter carries it when he goes out with Thomas' stock. I have heard that Kambonde also owns a rifle. It is a muzzle loader. It was bought from an Ovambo in the year of the locusts (1925) by native Hiakathorowa of Kaoko-Otavi. A sheep and a goat were paid for it ...

He was my Headman. He has taken my property and that is why I have gone against him. No one advised me to take this step ...

Native Opani/His X Mark

Read over interpreted and assented to before me at Kaoko Otavi this date 3/9/30 (Sgd) C. Hugo Hahn.

O/C, Native Affairs, Ovamboland.<sup>65</sup>

The conflict between Upani and Mutate was part and parcel of shifting colonial representations of the political landscape of Kaoko since the mid-1910s. From a colonial perspective, this conflict was an expression of political tensions seen as the major challenge to a successful administration of the area. In

<sup>64</sup> Roberts, 'Text and testimony', 461.

<sup>65</sup> Recorded statement of Upani, 3 Sept. 1930.

Kaoko Otavi the policy of establishing ethnic hierarchies coincided with changing local demographic and power constellations. The 1910s had seen several immigrations of people and their herds from southern Angola into Kaoko.<sup>66</sup> The new arrivals met a population that, having lost most of their possessions in a period of intense cattle raiding, were now gradually rebuilding their herds.<sup>67</sup> The arrival of immigrants and their claim to residential and political supremacy was not uncontested. Thomas Mutate crossed the Kunene into Kaoko around 1916 but archival documents give no information as to why he settled at Kaoko Otavi.<sup>68</sup> In contrast, oral information identified family networks as the reason for Mutate's trajectory.<sup>69</sup> In the beginning, the immigrants' settlement at Kaoko Otavi was negotiated, and eventually accepted, by the local community. Yet Mutate's personal political interests, his alliance with Tom and the latter's successful career soon enabled him to establish himself as the leading headman, supported by a colonial administration-in-the-making.<sup>70</sup> The political power plays and social stratification in the region had already caused two interventions in Kaoko by Major Charles Manning, who mounted two military expeditions in 1917 and 1919, with the aims of disarming people and stopping smuggling from, and into neighbouring areas.<sup>71</sup> The narrative initiated by Manning and recycled by Hahn in the early 1920s had led to the consolidation of the political leadership of Vita Tom and some of his followers, among them Mutate. As representatives of a Herero society, perceived to be powerful,

<sup>66</sup> Michael Bollig, 'Power and trade in precolonial and early colonial northern Kaokoland 1860s–1940s', in Hayes *et al.*, *Namibia*, 184.

<sup>67</sup> NAN J XII b5, Vedder to von Zastrow (1914), E. Dütman, 'Kurze Reiseerinnerungen aus dem Nordwesten Deutsch-Südwestafrikas und dem südlichen Angola', *Beiträge zur Kolonialpolitik und Kolonialwirtschaft* (1900/1), 613; Bollig, 'Power and trade', 176 and 185; G. Hartmann, 'Meine Expedition 1900 ins nördliche Kaokofeld und 1901 durch das Amboland', *Beiträge zur Kolonialpolitik und Kolonialwirtschaft*, 4 (1902–3); interview with Ngakurupe Koviti, Kaoko Otavi, 2002.

<sup>68</sup> NAN NAO 31–24/13 – Officer in Charge Opuwo to Chief Native Commissioner Windhoek, 25 June 1941; Lawrence Green, *Lords of the Last Frontier* (Parow, 1952), 50; interview with David Humu, Kaoko Otavi, 12 Jan. 2002. David Humu dated his father's coming to Kaoko Otavi around 1917/18, yet he settled there permanently a little later. In the archive the earliest reports of the administration mention Thomas Mutate as one of Vita Tom's headmen but they do not indicate his place of residence; see NAN NAO 18, monthly and annual reports of the native commissioner Ondangua, 1924 and 1925. In 1926 Colonel Denys Reitz apparently met Mutate in Kaoko Otavi, see Green, *Lords*, 50.

<sup>69</sup> In oral information Thomas Mutate was said to have been given a place to stay at Kaoko Otavi by Tjongoha, the local headman and a maternal uncle to Mutate. A serious power play soon developed between them, which led to Tjongoha's, and his followers', expulsion from the place. Interviews with Uetjipurajje Hiatjivi, Onjette, 7 May 2002, and with Mbatambauka Rutjindo Tjavara, Onjette, 10 Jan. 2002.

<sup>70</sup> The archival sources give Tjongoha's, and with him Upani's, 'removal' from Kaoko Otavi, as occurring in about 1918, but they do not specify the context of their leaving. See NAN NAO 28–24/1/1, statement of Thomas Mutate, 30 Sept. 1930; and NAN LOU 1/2/2 – No. 23, second statement of Ventuura Nejanena, n.d.

<sup>71</sup> NAN ADM 156 W32, General Kaokoveld Report by Major C. N. Manning, Resident Commissioner Ovamboland, November 1917; and NAN SWAA 2516, Report by Major C. N. Manning re Second Tour Kaokoveld; Disarmament; General, 25 Aug. 1919.

wealthy and modern in respect of culture and education, they were favoured over Ovatjimba, their 'uncivilized' counterparts.<sup>72</sup>

In the first decade of South African rule, Tom and Mutate were wooed as counterparts of a colonial administration that lacked the means and personnel to establish direct control in Kaoko.<sup>73</sup> By the late 1920s, however, Hahn's perception of them had changed. Thomas Mutate had proved to be an unaccommodating figure who continuously challenged regulations and undermined the native commissioner's authority.<sup>74</sup> The elephant shooting case confirmed, in Hahn's revised view, Mutate's inherent 'stubbornness'. Game protection and management had been a site of contestation from the very beginning of colonial intervention in Kaoko, not least because it signified precolonial trans-regional African social and economic activities.<sup>75</sup> In the 1920s and '30s the commercial exploitation and cultural appropriation of game continued to be one of the arenas in which male rivalries unfolded. What Hahn, Mutate, Tom and Upani negotiated was the question of who could legitimately shoot game, and, implicitly, own guns. The link between hunting and the possession of arms was crucial, hence its prominence as an issue in Upani's statement. In the administration's understanding, the issue was clear: game shooting, and particularly the killing of big game, was not permitted for African residents, South African officers stationed in the reserve, or settlers and traders who entered Kaoko to shoot game illegally.<sup>76</sup> Exceptional permits given out by the administration were the formal *sine qua non* of legal hunting activity in the northwestern area.<sup>77</sup> Access to guns and

<sup>72</sup> There are a number of authors who produced and reproduced this cultural hierarchy between Herero, Ovahimba and Ovatjimba in Kaoko, most prominently among them Heinrich Vedder, 'The Ovaherero', in L. Fourie, C. H. L. Hahn and H. Vedder, *The Native Tribes of South West Africa* (Cape Town, 1928), 153–211; and NAN J XII b5, Heinrich Vedder, 'Reisebericht des Missionars Vedder an den Bezirksamtman von Zastrow', *Geographische und ethnographische Forschungen im Kaokoveld 1900–1914* (1914).

<sup>73</sup> Meredith McKittrick has made a similar point for administrative policies in Owambo in the early decades of South African rule. See Meredith McKittrick, 'Forsaking their fathers? Colonialism, Christianity, and coming of age in Ovamboland, northern Namibia', in Lisa A. Lindsay and Stephann F. Miescher (eds.), *Men and Masculinities in Modern Africa* (Portsmouth, 2003), 46.

<sup>74</sup> NAN NAO 28–24/1/1 – C. H. L. Hahn to the Secretary for South-West Africa 12 Jan. 1934; NAN NAO 19, C. H. L. Hahn to the secretary, monthly report January and February 1935. There had been several cases against Thomas Mutate earlier (see NAN NAO 28 – Vol. 3 – C. H. L. Hahn re cases against Thomas Mutate, 3 May and 25 Sept. 1934), the one mentioned in the statement of Upani was about a transaction involving sheep in 1919–20; see NAN NAO 28–2471/17, C. H. L. Hahn to the Magistrate Outjo, 28 Sept. 1930.

<sup>75</sup> For a discussion of precolonial, nineteenth-century trade in game and luxury items such as ivory and ostrich feathers, see Bollig, 'Power and trade', 175–93.

<sup>76</sup> Kaoko had been part of a game reserve since 1907, i.e. since the German colonial period. The *Verordnung des Gouverneurs von Deutsch-Südwestafrika betreffend Bildung von Wildreservaten in dem südwestafrikanischen Schutzgebiete* of 1907 (22 March 1907, No. 88) prohibited all shooting of big game. Game protection laws were generally taken over by the South African administration in 1916: see Game Law of 6 January 1916.

<sup>77</sup> See, e.g., NAN SWAA 2513 additional NC SWA to Chief NC, 26 Apr. 1939, on permits to residents in Kaoko. Most travellers, missionaries, scientists and members of



ammunition was restricted to the chief and a few headmen. Tom and Mutate had apparently used their status in order to control access to arms for the benefit of their own political and economic interests.<sup>78</sup> Upani's attempts to use both illicit game hunting and the police and native commissioner's attempt to challenge Mutate's hegemonic claim to put an end to his own sociopolitical exclusion, remained unsuccessful. While Mutate failed to solve the conflict within the community, his position as headman was, temporarily at least, reconfirmed.<sup>79</sup> Things changed, as we saw, when Petrus Kakuyu was allegedly killed. What was officially framed in terms of murder in accordance with the rule of colonial law continued to mirror the rivalry between Upani and Mutate and their concern with the political landscape of Kaoko Otavi.

Numerous statements recount the killing of Kakuyu and accuse Mutate and Tom of various forms of violence and intimidation towards their subjects. One of these statements was attributed to Hiakatondo Katuta, a resident of Kaoko Otavi and witness for the case. 'Petrus Kakuyu's disappearance was planned by both Oorlog and mostly Thomas Mutate, as will be seen out of the conversation I overheard and other circumstances'. He continued:

Firstly: on a certain date Thomas Mutate, Oorlog, Willem Hartley, myself and a party visited Sgt. Cogill at Ombombo, where we encountered Sgt. du Buisson. This was in 1930 about. On our Return journey I heard Thomas Mutate telling Willem Hartley that he would very much like to kill Petrus Kakuyu, but for Chief Oorlog ...

Thomas Mutate called me aside one day and told me, that I myself, Karirondua and Vetuura must take Petrus Kakuyu to the bush, to kill and hide him. But however it was found that I was related to P. Kakuyu, and I was told to go to the Cattle Post instead, and Kamunika had to come in my place. Oorlog was all the time at Kaoko-Otavi when these things went on.

I went to the Cattle Post and the next thing I hear is from my wife who had remained at Kaoko-Otavi that P. Kakuyu has disappeared. A dance was given and two oxen killed according to Herero custom, to celebrate the death of the enemy Petrus Kakuyu [the so-called outoni cattle].

My wife Wapuka has since been forced away from me, by Thomas Mutate, less she gives out some information, to me, and to other people of authority. She as well as one Embura who has been in Thomas' Kraal all the time, when these things went on, Maaveereiye Kakuyu's wife, Mavereruuijani her sister and Twamunu Kakuyu's father in Law, are kept in custody by Thomas who watches their movements, afraid they will give away information.<sup>80</sup>

The performance, control and management of violence was an integral part of early colonial rule in Kaoko. Experiences of violence had shaped the biographies of men such as Tom, Mutate *and* Hahn. Mutate and Tom

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the settler society who ventured into Kaoko in the early decades of the twentieth century used the occasion for hunting activities. See Rizzo, 'Glance into the camera'.

<sup>78</sup> NAN SWAA 493 – A 50/256/4, C. H. L. Hahn to the Secretary for South-West Africa, 18 Mar. 1938.

<sup>79</sup> NAN LOU 1/2/2 – No. 23, further statement of Ventuura Nejanena, n.d.

<sup>80</sup> NAN NAO 20 – 24/1/1, statement of Hiakatondo Kututa, interpreted by Willem Hartley, recorded by Sgt. Cogill, Otjondjorese, 18 Nov. 1934. The spelling is from the original.

had acted as policemen and mercenaries in southern Angola, supporting the Portuguese authorities in their suppression of local resistance.<sup>81</sup> Later, their immigration and settlement in Kaoko drew them into raids, fighting and looting.<sup>82</sup> Hahn had received his training in arms and intelligence in the northern areas of the colony under the aegis of Major Manning.<sup>83</sup> Their experience of armed intervention and conflict and, after 1917, of an expanding colonial discourse of disarmament, patterned the way in which these men negotiated the parameters of rule and control in Kaoko. The colonial stand on the question of arms and, linked to it, on exercising violence was ambiguous. Arms and uniforms signified power and status while martial symbols continued to be reproduced as part of an established tradition of masculinities.<sup>84</sup> Indeed, the administration tended to support the headmen's exercise of power and application of controlled violence against their subjects, as long as it remained useful to the general colonial project.<sup>85</sup> On the other hand, the discourse of pacification and the ideology of colonial law and order legitimized the colonizing project as an enterprise that would, at least partly, benefit ordinary Africans.<sup>86</sup> This ambiguity gave meaning to the dualism of customary and colonial law and enabled the native commissioner to classify acts of violence predominantly in terms of their impact on colonial power and hegemony.<sup>87</sup>

The enforcement of a colonial legal culture by the native commissioner proved difficult. In the handling of a law case, the availability and circulation

<sup>81</sup> Stals and Otto-Reiner, *Oorlog en Vrede*, 29ff.; Bollig, 'Power and trade', 180ff.

<sup>82</sup> Interview with Jairaeua Tjihoto, Kaoko Otavi, 6 May 2002; interview with Ngakurupe Koviti, Kaoko Otavi, 8 May 2002; interview with Mariri Koviti Tjihurua, Kaoko Otavi, 9 May 2002. There is plenty of archival documentation on these alleged raids; see NAN SWAA 2379 – A. 518/4/3, Kaokoveld Native Unrest, 1916–48.

<sup>83</sup> See Patricia Hayes, 'Northern exposures: the photography of C. H. L. Hahn, native commissioner of Ovamboland 1915–1946', in Wolfram Hartmann, Jeremy Silvester and Patricia Hayes (eds.), *The Colonising Camera. Photographs in the Making of Namibian History* (Cape Town, 1998), 172–3. Manning was the first resident commissioner in the north.

<sup>84</sup> The importance of arms and uniforms as signs of power and status applied to both the colonial and the African societies involved. Examples of martial symbols can be found in the reports by Major Manning and in Hahn's 1924 diary – see NAN Accession 450 – 23D.14, Kaokoveld Journey – and in photographs of Vita Tom and his rivals. See Rizzo, 'Glance into the camera'.

<sup>85</sup> There were continuous debates on the question of corporal punishment and the ways chiefs and headmen ruled over their subjects. See NAN NAO 20, annual and monthly reports, C. H. L. Hahn, annual report 1937, 18 Jan. 1938; and NAN NAO 29 24/2, C. H. L. Hahn to du Buisson, 17 Sept. 1936; also the reports by the police stationed at Tshimhaka, between 1926 and 1931, filed under NAN PTJ 1 4/R. For a comparison with Owambo, see McKittrick, 'Faithful daughter', 275.

<sup>86</sup> Silvester *et al.*, 'Trees', 20.

<sup>87</sup> See NAN NAO 19, C. H. L. Hahn to the secretary, annual and monthly reports 1932–36, C. H. L. Hahn to the secretary, annual report 1936, 16 Jan. 1937; and NAN NAO 20, C. H. L. Hahn to the secretary, annual and monthly reports, 1937–42, C. H. L. Hahn to the secretary, monthly report February and March 1938, 30 Mar. 1938. For a discussion of the co-existence of customary and metropolitan law under colonialism see Roberts, *Litigants and Households*, 18–19.

of knowledge became a bone of contention.<sup>88</sup> A letter written to Hahn by one of his police officers revealed the difficulties:

In the whole my investigations, are being hampered very much, and I cannot get any information that lead to a definite statement. But I would like to suggest the following scheme to be adopted, to try and get at the bottom of the Affair.

There is still present the Wife of P Kakuyu, her sister, Natives Embura, and another by the name of Vetuura who can give a light on the case. Especially the native Vetuura. If these natives could be arrested when you next visit the Kaoko-veldt, and taken to a isolated place, say Okorosave and there be interrogated by you, if possible in my presence the matter will come to light.

I am aware that the Native Vetuura knows quite a lot, for he was one of Thomas Mutates Chief Servants at the time. I have as a matter of fact, at an earlier date tried to get some information from him and the result was that Oorlog sent for him and he is now residing with Oorlog simply loafing about at Otjijandjasemo, and I have the impression that his movements are being watched very much ...

My attempts to approach the woman of late P Kakuyu and her Sister have been frustrated, at many occasions I have even noted that my movements, when I visited Kaoko-Otavi, have been watched.<sup>89</sup>

The ability to determine the narrative about a past event and its protagonists challenged all men involved. Arranging knowledge into a body of evidence became a site of power.<sup>90</sup> For Hahn and his policemen, Mutate, Tom and their adversaries, the cases reinforced male spheres of action and speech, of politics and social expertise. Thomas Mutate and Vita Tom had been well aware of this from the very beginning of the investigation, and it was precisely the manipulation of knowledge that led to Vita Tom's prosecution. The significance of controlling the narrative of an event under formal investigation was clear to the rivals of Tom and Mutate. Yet, Upani failed in his attempt to restore the political balance of power that had predated Mutate's rule in Kaoko Otavi. Upani's tactical play led Hahn to consider him as an unreliable candidate for a post in the colonial administration.<sup>91</sup>

Legal prosecution of the serious crimes of murder and poaching in colonial Kaoko in the early decades of South African rule affected men and not women.<sup>92</sup> If women engaged with or were drawn into the legal sphere, it was

<sup>88</sup> Roberts has referred to the significance of written knowledge for 'governmentality'. See Roberts, *Litigants and Households*, 25.

<sup>89</sup> NAN NAO 28-24/1/1, Sgt. Cogill to C. H. L. Hahn, 'Confidential. Re: Disappearance. Petrus Kakuyu', 5 Feb. 1934.

<sup>90</sup> For a discussion of the significance of knowledge in the exercise of colonial power, see Lalu, 'Grammar of domination', 54ff.

<sup>91</sup> In fact Upani was not a candidate for the headmen council, which was introduced in Kaoko in the late 1930s / early 1940s, shortly after the removal of Mutate and Tom. From the mid-1940s onwards, Upani was continuously involved in conflicts with the administration.

<sup>92</sup> There is an 'empirical gap' (Silvester *et al.*, 'Trees', 13-14) here. The absence of women charged for offences considered to be serious mirrors the complexities of criminal classification in colonial Kaoko and a reluctance to consider violent acts by women in terms of murder or manslaughter. McKittrick discusses the only case of a woman from Owambo tried in a colonial court for murder between 1915 and 1955, although she was not the only accused murderess: see McKittrick, 'Faithful daughter', 274.

for issues of property, adultery or residence.<sup>93</sup> Women's roles were referential; they were conceptualized in terms of their relation to men and linked to the sphere of private, family and household relationships. In the courts, women – guilty or innocent – appeared as widows, wives and mothers raising accusations, defending property and claiming rights.<sup>94</sup> It was no different in the elephant and murder cases, where men were conceived of as the actors and threatened with prosecution, while women were confined to the role of witness. Two general problems of interpretation emerge with respect to women's agency: firstly, women constituted a much smaller group than the men involved; and secondly, female possibilities for speech and action were limited and were constrained by a gendered conception of political and legal spheres.<sup>95</sup> In the formal record the roles and actions of the women involved become even more elusive than those of the men. The statements attributed to them are short, they suggest narrative incompetence, social and political marginality and legal irrelevance.<sup>96</sup> The questioning of a woman called Karinana is illustrative:

Native Woman Karinana X examined by Mr. Hahn states:

I saw the elephant at the water. It was the same elephant that was subsequently killed. Opani and three other natives Tshikundu, Katutenge and Kamburupuru chased it. They pursued it with assegais. Opani was here on a visit. His home is at Omuhiba. Thomas was away at Ombombo when I first saw the elephant at the water. This is some time ago. I do not know how many months. I do not know what happened to the bones of the elephant. I heard that it was killed close to Kaoko-Otavi. I did not see that it was wounded. I saw it standing at the drinking place but I could not see whether it was wounded or not. Petrus is the man who came to Kambonde's kraal to ask for the tusks. He is Josephina's husband. I understood that he wished to hide them. Later I assisted him to hide them. Juliana is the one who suggested that the tusks must be hidden. She lives next door to Thomas. Thomas was away at Tshimhaka at the time. I do not know what he was doing there. Kambonde, Thomas' brother was away with him. I have not heard that Thomas is accused of having shot the elephant. I do not know whether Opani is responsible for its death. He told me that he had driven it away from the water and that he had assegais with which he had stabbed it. I do not know who killed it ... I have spoken the truth.

Native Woman Karinana

Her Mark

Read over and interpreted and assented to before me this date at Kaoko-Otavi 3/9/30  
(Sgd) C. Hugo Hahn

O/C, Native Affairs, Ovamboland.<sup>97</sup>

<sup>93</sup> For example, the case of a woman called Onderangandja against her husband filed under NAN NAO 26, miscellaneous 1916–46, 29 Sept. 1929, or in 1935 the case of a woman called Teresa, again in a conflict with her husband over stock, mistreatment and residence, filed under NAN NAO 28, Kaokoveld General.

<sup>94</sup> Marcia Wright made a similar point for legal procedures in colonial Zambia at a magistrate's court, where 'women usually, but not always, figured as complainants in civil cases and as victims in criminal cases': see Wright, 'Justice', 43.

<sup>95</sup> For a similar argument, see Patrica Hayes, 'The "Famine of the dams": gender, labour and politics in colonial Ovamboland 1929–1930', in Hayes *et al.*, *Namibia*, 117.

<sup>96</sup> This is most evidently expressed in the fact that women were exclusively identified by their first names.

<sup>97</sup> NAN NAO 28 – 24/1/1, statement of Karinana, Kaoko Otavi, 3 Sept. 1930.

The women chose different dispute strategies.<sup>98</sup> According to the statements archived, the women hid the tusks and thereby sought to prevent prosecution. Throughout the inquiry they showed strong reluctance to debate hiding the tusks in terms of game legislation. None of the women questioned on the elephant shooting accused someone else of being the poacher. Since African women and female social spaces were less accessible to male colonial personnel than African men and their social world, women played a part in the management of valuables and objects of contraband.<sup>99</sup> The administration's perception of game management in particular, and resource management in general, as predominantly male spheres prevented a contextual reading that might have explained women's active involvement.<sup>100</sup> Hahn and his policemen did not follow this trace; Karinana and the other women mentioned in the above statement were neither questioned further nor prosecuted. Claims to a lack of knowledge or information, and the prevalence of hearsay and rumour framing the account of Karinana, became an active strategy in facing the investigation, particularly for women but also for men. Covering or eliminating the traces of a crime was apparently a further option. While Hahn considered hiding the tusks as an act of subversion, it mirrored the spaces and options available to women in a situation of threatened prosecution.

Nevertheless the pressure on women grew after the death of Kakuyu. While the group of women interrogated remained small, their questioning became more intense.<sup>101</sup> Their accounts continued to undermine Hahn's search for evidence as the narrative was framed less around the question of who had killed Kakuyu than around wider concerns about violent acts. Domestic violence, sexual harassment and male tutelage figured exclusively in the statements attributed to women.<sup>102</sup> During the inquiry, women in particular were subjected to various forms of violence by local men and by colonial personnel.<sup>103</sup> Increasing threats to individual and social security may have heightened the women's engagement with the cases, in the belief that

<sup>98</sup> On alternative means for resolving disputes in another African colonial context, see Carol Dickerman, 'The use of court records as sources for African history: some examples from Bujumbura, Burundi', *History in Africa*, 11 (1984), 69–81. On the deterioration of conflict management for women under colonialism, see Gesine Krüger and Dag Henriksen, '"We have been captives long enough. We want to be free". Land, uniforms and politics in the history of the Herero in the interwar period', in Hayes *et al.*, *Namibia*, 167.

<sup>99</sup> NAN NAO 28–24/1/1. Sgt. Cogill confirmed the difficulties of approaching women: Cogill to C. H. L. Hahn, n.p., 5 Feb. 1934.

<sup>100</sup> Ginzburg discusses selective biases in considering evidence in criminal contexts for both sixteenth-century Inquisition trials and twentieth-century criminal cases (Ginzburg, *Judge and Historian*).

<sup>101</sup> At the time the murder was investigated, three women, among them Kakuyu's wife, were questioned repeatedly.

<sup>102</sup> For a comparison with colonial Owambo, see McKittrick, 'Faithful daughter'.

<sup>103</sup> I have discussed allegations that du Buisson beat people. Hahn is said to have beaten and tortured women who refused to make statements about the cases. As a particularly brutal instance interviewees recalled the native commissioner forcing women to stand in the sun while their skin burnt until they would agree to testify. Interview with Uetjipuraje Hiattjivi, Onjette, 9.1.2002.

the law was a powerful colonial institution that could produce an outcome consistent with their sense of wrong.<sup>104</sup> Josefine Mavere addressed these issues unequivocally in her account:

Accused No. 1 [Thomas Mutate] took an ox from Petrus' herd, while all his other animals were taken by Oorlog. After Petrus had disappeared, accused No. 1 asked me to sleep with him but I refused ... Petrus and I have been living together for a long time. I knew him very well. Years ago he had an infected wound but he was treated in a hospital and recovered. After that he was never sick again. Petrus was a good man, for me and for my father. We lived together very well. He never complained about a weak heart. He had no grey hair. His head was still black. He wasn't old. I have never seen him treating anybody in a bad way.<sup>105</sup>

This account demonstrates how the documents' focus on interactions considered judicially relevant deprived women's agency of its meaning. In effect, these documents embodied the colonial state's ignorance of female action and attitudes.

My reading suggests that while women were drawn into the investigation in diverse and multiple ways, their acts and arguments were linked to their concerns with the implications of colonialism and changes of male political power and social control. The first two decades of South African rule in Kaoko led to shifts in the constitution of status and power of men such as Tom and Mutate. These men successfully reframed the sources of power and negotiated their roles within the colonial administration. They benefited from a process through which power and wealth were increasingly concentrated in the hands of a limited number of male potentates, as long as they remained on friendly terms with the colonial state. Not unexpectedly, opposition to this system grew, particularly from those like Upani Hiamauva, who had been excluded from power.<sup>106</sup> Women's experiences of the centralization of power and the accumulation of wealth reflected the deterioration of social security and the gender imbalances caused by the colonial transformation.<sup>107</sup> In this context, colonial law could prove an additional field of social action and dispute, enabling women, if not to influence the aims and outcomes of a trial, then at least to raise concerns about power, violence and justice.<sup>108</sup>

<sup>104</sup> For the same argument in a different context see Roberts, 'Text and testimony': Roberts and Mann (eds.), *Law in Colonial Africa*, 31, and Roberts, *Litigants and Households*, 24.

<sup>105</sup> NAN LOU 1/2/1 No. 23, statement of Josefine Mavere, at the circuit court of Otjiwarongo, given in Otjiherero, translated into Afrikaans, 7 Jan. 1935 (my translation).

<sup>106</sup> On conflict resulting from colonial intervention and shifts in the construction of male status and power, see Meredith McKittrick, 'Generational struggle and social mobility in western Ovambo communities 1915–1954', in Hayes *et al.*, *Namibia*, 248–9.

<sup>107</sup> See Marion Wallace, *Health, Power and Politics in Windhoek, Namibia, 1915–45* (Basel, 2002), and Moore and Vaughan, *Cutting Down Trees* (particularly ch. 3). Female interviewees stressed problems resulting precisely from the emergence of powerful men such as Tom and Mutate: interview with Mariro Koviti Tjihuhura, Kaoko Otavi, 4 Jan. 2002; with Kainaa Menjengua Tjihero, Kaoko Otavi, 8 Jan. 2002; and with Emily Kazombaruru Kavari, Kaoko Otavi, 9.1.2002.

<sup>108</sup> See Roberts, *Litigants and Households*, 16. On the significance of colonial law for women and the sanctioning of violence, see Sally Engle Merry, 'The articulation of legal spheres', in Hay and Wright (eds.), *Women and the Law*, 87.



## CONCLUSION

This essay has discussed two distinctive yet mutually constitutive aspects of the narrative about the elephant shooting and murder cases. My reflections have addressed the archival material on the cases and the discursive parameters which the written sources impose on historical interpretation. The main sources discussed have been the series of recorded statements that emerged as part of a criminal narrative underpinning colonial efforts to establish and sustain administrative rule and order. I have argued that the context of the legal prosecution and the strong influence of colonial officers on the framing of the statements left its imprint on these representations. The resulting distortion entails methodological difficulties relating to authorship and agency as it complicates attempts to attribute a particular statement to an individual man or woman. As indicated at the outset, the entanglement of official – that is, colonial – and African authorship in written accounts attributed to representatives of the colonial state has received some attention from historians.<sup>109</sup> I have argued that the question of voice and action is worthy of further discussion.<sup>110</sup> While the legal narrative claimed to provide evidence for ‘who had done (and said) what’ in the cases involving the elephant killing and murder, it also generated inconsistent knowledge. I have tried to explore the possibilities of using these documents for a historical interpretation and I have shown that it is important first to establish in what way the narrative might be historically meaningful. Using witness statements from the elephant and murder cases, I have tried to re-inscribe the archive into Kako’s history. I have avoided reconstructing a dominant narrative; instead I have explored the cases as a legacy of the colonial ordering of knowledge, with its limits, contradictions *and* openings for more balanced representations of African actors and actions in the past.

One way of exploring the constraints of the archival narrative and the logic of the legal prosecution is to focus on gender and the ways in which the colonial discourse conceived female agency as marginal and inconsequential.<sup>111</sup> The South African administration thought of African women *and* men often generically, en masse, rather than individually.<sup>112</sup> What makes the elephant and murder cases so interesting historically, I argue, is that, contrary to the prevailing policy, the criminal investigation made it – at least in theory – a condition sine qua non to identify individual actors and to reconstruct their motives, aims and strategies.<sup>113</sup> Yet, the colonial stand remained ambiguous, and the case of Mutate and Tom is exemplary in its exposure of colonial inconsistencies in handling and applying the law.<sup>114</sup> These

<sup>109</sup> See the introduction to Luise White, Stephan F. Miescher and David William Cohen (eds.), *African Words, African Voices. Critical Practices in Oral History* (Bloomington, 2001); Moore and Vaughan, *Cutting Down Trees*, xiii; and Jean Comaroff and John Comaroff, *Of Revelation and Revolution. The Dialectics of Modernity on a South African Frontier* (London, 1997).

<sup>110</sup> Zemon Davis’s work on sixteenth-century French pardon letters unintentionally hints at the specificity of imbalanced power relations under colonial rule. Zemon Davis, *Fiction*.

<sup>111</sup> Lalu, ‘Grammar of domination’, 50–1.

<sup>112</sup> Wallace, *Health*, 12. Wallace makes her point following Megan Vaughan, *Curing their Ills: Colonial Power and African Illness* (Cambridge, 1991).

<sup>113</sup> See Roberts, *Litigants and Households*, 30.

<sup>114</sup> See Roberts and Mann (eds.), *Law in Colonial Africa*, 36.

contradictions were rooted in the administration's perception of Africans and their conceptualization of African agency. While the colonial administration perceived the colonized as capable of action, at the same time it relegated African actors to the status of objects of colonial rule.<sup>115</sup> Though Mutate and Tom were sent to prison, they served only a short period of their sentences. Under colonialism the fact that the victim, Kakuyu, was an African – and not a European – most probably attenuated the gravity of the offence. What was of greater interest was that Mutate and Tom were prosecuted as representatives of a type of local leadership that had become obsolete for the colonial administration. Prosecution was not concerned with their status as individual subjects. While their case entailed the inevitability of legal conviction, their status as leaders concurrently transformed the verdict into a symbolic disciplinary sanction.

That Mutate and Tom were made responsible for what had happened was linked to a gendered narrative presupposing politics and law as the exclusive realm of men. The elephant and murder cases read as re-inscriptions and re-enforcements of male claims to those domains. Women's roles were reduced to residual significance; the roles assigned to them on the margins of society were circumscribed by the colonial order. Yet colonial law and the ways it was handled provided women in Kaoko with an alternative sphere of conflict resolution, particularly when the political leadership was challenged and local strategies, such as those prescribed by customary law, seemed less acceptable. Engaging with the colonial state entailed risks and eventually the elephant and murder cases took their toll. Tom died on his way back to the north following his release from prison.<sup>116</sup> Mutate managed to return to Kaoko against all odds but was never considered for a headman post again.<sup>117</sup> In place of individual leaders, a council of headmen was introduced in Kaoko after 1939; this shift in administration had been prepared by Hahn long before the conviction of Tom and Mutate.

<sup>115</sup> Lalu, 'Grammar of domination', 53.

<sup>116</sup> As Tom died in Uukwaluudhi, in then Ovamboland, he was buried there. His remains were taken to Kaoko only in 1985; see Stals and Otto-Reiner, *Oorlog en Vrede*, 72–3.

<sup>117</sup> Mutate passed away in August 1956, see BOP 8 – 1/15/61, officer in charge Opuwo to chief native commissioner, 19 Jan. 1957.